

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 785

Introduced by Senator Wolk

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2 of Division 2 of, to add Chapter 4 (commencing with Section 22160) to Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to consolidate
2 existing design-build statutes and eliminate inconsistencies in
3 statutory language by adopting authority of general application to
4 identified agencies and repealing superseded sections.

5 SEC. 2. Section 14661 of the Government Code is repealed.

6 SEC. 3. Section 14661.1 of the Government Code is repealed.

7 SEC. 4. Section 32132.5 of the Health and Safety Code is
8 amended to read:

9 32132.5. (a) Notwithstanding Section 32132 or any other
10 ~~provision of law~~, upon approval by the board of directors of the
11 Sonoma Valley Health Care District, the design-build procedure
12 described in Article 6 (commencing with Section 10186) of Chapter
13 1 of Part 2 of Division 2 of the Public Contract Code may be used
14 to assign contracts for the construction of a building or
15 improvements directly related to construction of a hospital or health
16 facility building at the Sonoma Valley Hospital.

17 (b) For purposes of this section, all references in Article 6
18 (commencing with Section 10186) of Chapter 1 of Part 2 of
19 Division 2 of the Public Contract Code to “county” and “governing
20 body” shall mean the Sonoma Valley Health Care District.

21 (c) A hospital building project utilizing the design-build process
22 authorized by subdivision (a) shall be reviewed and inspected in
23 accordance with the standards and requirements of the Alfred E.
24 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
25 (commencing with Section 129675) of Part 7 of Division 107).

26 SEC. 5. Article 6 (commencing with Section 10186) is added
27 to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,
28 to read:

Article 6. State Agency Design-Build Projects

10186. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This article provides general authorization for certain state agencies to use design-build for projects, excluding projects on the state highway system.

(2) This article shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

10187. For purposes of this article, the following definitions apply:

(a) “Best value” means a value determined by evaluation of ~~proposals with reference to specified criteria objectively applied, including, but not limited to, price, quality of technical proposals, qualifications of key personnel, and other criteria deemed appropriate by the director.~~ *objective criteria related to price, features, functions, life cycle costs, experience, and past performance.* A best value determination may entail selection of the lowest priced technically acceptable proposals or selection of the best proposal for a fixed price established by the procuring agency, or it may consist of a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Department” means the Department of General Services and the Department of Corrections and Rehabilitation.

1 (d) “Design-build” means a project delivery process in which
2 both the design and construction of a project are procured from a
3 single entity.

4 (e) “Design-build entity” means a corporation, limited liability
5 company, partnership, joint venture, or other legal entity that is
6 able to provide appropriately licensed contracting, architectural,
7 and engineering services as needed pursuant to a design-build
8 contract.

9 (f) “Design-build team” means the design-build entity itself and
10 the individuals and other entities identified by the design-build
11 entity as members of its team. Members shall include the general
12 contractor and, if utilized in the design of the project, all electrical,
13 mechanical, and plumbing contractors.

14 (g) “Director” means, with respect to procurements undertaken
15 by the Department of General Services, the Director of General
16 Services or, with respect to procurements undertaken by the
17 Department of Corrections and Rehabilitation, the secretary of that
18 department.

19 10188. (a) Notwithstanding any other law, the director,
20 following notification to the State Public Works Board, may
21 procure design-build contracts for public works projects in excess
22 of one million dollars (\$1,000,000), awarding the contract using
23 either the low bid or best value, provided that this article shall not
24 apply to any projects on the state highway system.

25 (b) The director shall develop guidelines for a standard
26 organizational conflict-of-interest policy, consistent with applicable
27 law, regarding the ability of a person or entity, that performs
28 services for the department relating to the solicitation of a
29 design-build project, to submit a proposal as a design-build entity,
30 or to join a design-build team. This conflict-of-interest policy shall
31 apply to each department entering into design-build contracts
32 authorized under this article.

33 10189. (a) For contracts for public works projects awarded on
34 or after the effective date of the regulations adopted by the
35 Department of Industrial Relations pursuant to subdivision (g) of
36 Section 1771.5 of the Labor Code, the department shall reimburse
37 the Department of Industrial Relations for its reasonable and
38 directly related costs of performing prevailing wage monitoring
39 and enforcement on public works projects pursuant to rates
40 established by the department as set forth in subdivision (h) of

1 Section 1771.5 of the Labor Code. All moneys collected pursuant
2 to this subdivision shall be deposited in the State Public Works
3 Enforcement Fund, created by Section 1771.3 of the Labor Code,
4 and shall, subject to appropriation by the Legislature, be used only
5 for enforcement of prevailing wage requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations
7 for its reasonable and directly related costs of performing
8 monitoring and enforcement on public works projects, the
9 department may elect to continue operating an existing previously
10 approved labor compliance program to monitor and enforce
11 prevailing wage requirements on the project if it has either not
12 contracted with a third party to conduct its labor compliance
13 program and requests and receives approval from the department
14 to continue its existing program or it enters into a collective
15 bargaining agreement that binds all of the contractors performing
16 work on the project and that includes a mechanism for resolving
17 disputes about the payment of wages.

18 10190. The director shall notify the State Public Works Board
19 regarding the method to be used for selecting the design-build
20 entity, prior to advertising the design-build project.

21 10191. The procurement process for the design-build projects
22 shall progress as follows:

23 (a) (1) The director shall prepare a set of documents setting
24 forth the scope and estimated price of the project. The documents
25 may include, but need not be limited to, the size, type, and desired
26 design character of the project, performance specifications covering
27 the quality of materials, equipment, workmanship, preliminary
28 plans or building layouts, or any other information deemed
29 necessary to describe adequately the department's needs. The
30 performance specifications and any plans shall be prepared by a
31 design professional who is duly licensed and registered in
32 California.

33 (2) The documents shall not include a design-build-operate
34 contract for any project.

35 (b) Based on the documents prepared under subdivision (a), the
36 director shall prepare and issue a request for qualifications in order
37 to prequalify or short-list the design-build entities whose proposals
38 shall be evaluated for final selection. The request for qualifications
39 shall include, but need not be limited to, the following elements:

1 (1) Identification of the basic scope and needs of the project or
2 contract, the expected cost range, the methodology that will be
3 used by the department to evaluate proposals, the procedure for
4 final selection of the design-build entity, and any other information
5 deemed necessary by the director to inform interested parties of
6 the contracting opportunity.

7 (2) (A) Significant factors that the department reasonably
8 expects to consider in evaluating qualifications, including technical
9 design and construction expertise, skilled labor force availability,
10 and all other nonprice-related factors.

11 (B) For purposes of subparagraph (A), skilled labor force
12 availability shall be deemed satisfied by the existence of an
13 agreement with a registered apprenticeship program, approved by
14 the California Apprenticeship Council, that has graduated at least
15 one apprentice in each of the preceding five years. This graduation
16 requirement shall not apply to programs providing apprenticeship
17 training for any craft that was first deemed by the federal
18 Department of Labor and the Department of Industrial Relations
19 to be an apprenticeable craft within the five years prior to the
20 effective date of this article.

21 (3) A standard template request for statements of qualifications
22 prepared by the department. In preparing the standard template,
23 the department may consult with the construction industry, the
24 building trades and surety industry, and other agencies interested
25 in using the authorization provided by this article. The template
26 shall require the following information:

27 (A) If the design-build entity is a privately held corporation,
28 limited liability company, partnership, or joint venture, a listing
29 of all of the shareholders, partners, or members known at the time
30 of statement of qualification submission who will perform work
31 on the project.

32 (B) Evidence that the members of the design-build team have
33 completed, or demonstrated the experience, competency, capability,
34 and capacity to complete projects of similar size, scope, or
35 complexity, and that proposed key personnel have sufficient
36 experience and training to competently manage and complete the
37 design and construction of the project, and a financial statement
38 that ensures that the design-build entity has the capacity to
39 complete the project.

1 (C) The licenses, registration, and credentials required to design
2 and construct the project, including, but not limited to, information
3 on the revocation or suspension of any license, credential, or
4 registration.

5 (D) Evidence that establishes that the design-build entity has
6 the capacity to obtain all required payment and performance
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited
11 liability company, partnership, joint venture, or other legal entity,
12 a copy of the organizational documents or agreement committing
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record
15 shall be deemed acceptable if its experience modification rate for
16 the most recent three-year period is an average of 1.00 or less, and
17 its average total recordable injury or illness rate and average lost
18 work rate for the most recent three-year period does not exceed
19 the applicable statistical standards for its business category or if
20 the proposer is a party to an alternative dispute resolution system
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall
23 be certified under penalty of perjury by the design-build entity and
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not
26 otherwise a public record under the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code) shall not be open to public
29 inspection.

30 (c) Based on the documents prepared as described in subdivision
31 (a), the director shall prepare a request for proposals that invites
32 prequalified or short-listed entities to submit competitive sealed
33 proposals in the manner prescribed by the department. The request
34 for proposals shall include, but need not be limited to, the following
35 elements:

36 (1) Identification of the basic scope and needs of the project or
37 contract, the estimated cost of the project, the methodology that
38 will be used by the department to evaluate proposals, whether the
39 contract will be awarded on the basis of low bid or best value, and

1 any other information deemed necessary by the department to
2 inform interested parties of the contracting opportunity.

3 (2) Significant factors that the department reasonably expects
4 to consider in evaluating proposals, including, but not limited to,
5 cost or price and all nonprice-related factors.

6 (3) The relative importance or the weight assigned to each of
7 the factors identified in the request for proposals.

8 (4) Where a best value selection method is used, the department
9 may reserve the right to request proposal revisions and hold
10 discussions and negotiations with responsive proposers, in which
11 case the department shall so specify in the request for proposals
12 and shall publish separately or incorporate into the request for
13 proposals applicable procedures to be observed by the department
14 to ensure that any discussions or negotiations are conducted in
15 good faith.

16 (d) For those projects utilizing low bid as the final selection
17 method, the competitive bidding process shall result in lump-sum
18 bids by the prequalified or short-listed design-build entities, and
19 awards shall be made to the design-build entity that is the lowest
20 responsible bidder.

21 (e) For those projects utilizing best value as a selection method,
22 the design-build competition shall progress as follows:

23 (1) Competitive proposals shall be evaluated by using only the
24 criteria and selection procedures specifically identified in the
25 request for proposals.

26 (2) Pursuant to subdivision (c), the department may hold
27 discussions or negotiations with responsive proposers using the
28 process articulated in the department's request for proposals.

29 (3) When the evaluation is complete, the responsive proposers
30 shall be ranked based on a determination of value provided,
31 provided that no more than three proposers are required to be
32 ranked.

33 (4) The award of the contract shall be made to the responsible
34 design-build entity whose proposal is determined by the director
35 to have offered the best value to the public.

36 (5) Notwithstanding any other provision of this code, upon
37 issuance of a contract award, the director shall publicly announce
38 its award, identifying the design-build entity to which the award
39 is made, along with a written decision supporting its contract award
40 and stating the basis of the award.

(6) The written decision supporting the director's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

10192. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the director, and issued by a California admitted surety. The amount of the payment bond shall not be less than the amount of the performance bond.

(b) The design-build contract shall require errors and omissions insurance coverage for the design elements of the project.

(c) The department shall develop a standard form of payment and performance bond for its design-build projects.

10193. (a) The department, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

(b) Following award of the design-build contract, the design-build entity shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the department, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

(2) Establish reasonable qualification criteria and standards.

(3) Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The foregoing process does not apply to construction subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

~~10194. (a) If the department elects to award a project pursuant to this article, retention proceeds withheld by the department from the design-build entity shall not exceed 5 percent, except as otherwise specified in this section.~~

~~(b) (1) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the department and the design-build entity.~~

~~(2) This subdivision shall not apply if the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to, or at the time the bid is requested from the subcontractor, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the department and the design-build entity from any payment made by the design-build entity to the subcontractor.~~

~~(3) Notwithstanding any other provision of this section, the retention proceeds withheld from any payment by a department from the original design-build entity, by the original design-build entity contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, may exceed 5 percent on specific projects where the director has made a finding prior to the proposal due date that the project is substantially complex and therefore requires a higher retention amount than 5 percent, and the department includes both this finding and the actual retention amount in the procurement documents.~~

10194. (a) If the department elects to award a project pursuant to this article, retention proceeds withheld by the department from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(b) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the department and the design-build entity. If the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design build entity may withhold

1 *retention proceeds in excess of the percentage specified in the*
2 *contract between the department and the design-build entity from*
3 *any payment made by the design-build entity to the subcontractor.*

4 ~~10194.~~

5 10195. Nothing in this article affects, expands, alters, or limits
6 any rights or remedies otherwise available at law.

7 SEC. 6. Section 20133 of the Public Contract Code is repealed.

8 SEC. 7. Section 20175.2 of the Public Contract Code is
9 repealed.

10 SEC. 8. Section 20193 of the Public Contract Code is repealed.

11 SEC. 9. Section 20209 of the Public Contract Code is repealed.

12 SEC. 10. Section 20301.5 of the Public Contract Code is
13 repealed.

14 SEC. 11. Article 22 (commencing with Section 20360) of
15 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
16 repealed.

17 SEC. 12. Section 20688.6 of the Public Contract Code is
18 repealed.

19 SEC. 13. Chapter 4 (commencing with Section 22160) is added
20 to Part 3 of Division 2 of the Public Contract Code, to read:

21
22 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS
23

24 22160. (a) The Legislature finds and declares that the
25 design-build method of project delivery, using a best value
26 procurement methodology, has been authorized for various
27 agencies that have reported benefits from such projects including
28 reduced project costs, expedited project completion, and design
29 features that are not achievable through the traditional
30 design-bid-build method.

31 (b) It is the intent of the Legislature that the following occur:

32 (1) This article provides general authorization for local agencies
33 to use design-build for projects, excluding projects on the state
34 highway system.

35 (2) This article shall not be deemed to provide a preference for
36 the design-build method over other procurement methodologies.

37 22161. For purposes of this article, the following definitions
38 apply:

39 (a) “Best value” means a value determined by evaluation of
40 proposals with reference to specified criteria objectively applied;

1 including, but not limited to, price, quality of technical proposals,
2 qualifications of key personnel, and other criteria deemed
3 appropriate by the local agency: *objective criteria related to price,*
4 *features, functions, life cycle costs, experience, and past*
5 *performance.* A best value determination may entail selection of
6 the lowest priced technically acceptable proposal or selection of
7 the best proposal for a fixed price established by the procuring
8 agency, or it may consist of a tradeoff between price and other
9 specified factors.

10 (b) “Construction subcontract” means each subcontract awarded
11 by the design-build entity to a subcontractor that will perform work
12 or labor or render service to the design-build entity in or about the
13 construction of the work or improvement, or a subcontractor
14 licensed by the State of California that, under subcontract to the
15 design-build entity, specially fabricates and installs a portion of
16 the work or improvement according to detailed drawings contained
17 in the plans and specifications produced by the design-build team.

18 (c) “Design-build” means a project delivery process in which
19 both the design and construction of a project are procured from a
20 single entity.

21 (d) “Design-build entity” means a corporation, limited liability
22 company, partnership, joint venture, or other legal entity that is
23 able to provide appropriately licensed contracting, architectural,
24 and engineering services as needed pursuant to a design-build
25 contract.

26 (e) “Design-build team” means the design-build entity itself
27 and the individuals and other entities identified by the design-build
28 entity as members of its team. Members shall include the general
29 contractor and, if utilized in the design of the project, all electrical,
30 mechanical, and plumbing contractors.

31 (f) “Local agency” means the following:

32 (1) A city, county, or city and county.

33 (2) A special district that operates wastewater facilities, solid
34 waste management facilities, or water recycling facilities.

35 (3) Any transit district, included transit district, municipal
36 operator, included municipal operator, or transit development
37 board, as defined in Section 99210 of the Public Utilities Code, or
38 a consolidated agency, as defined in Section 132353.1 of the Public
39 Utilities Code, or any joint powers authority formed to provide
40 transit service.

1 (g) (1) For a local agency defined in paragraph (1) of
2 subdivision (f), “project” means the construction of a building
3 and improvements directly related to the construction of a building,
4 and county sanitation wastewater treatment facilities, but does
5 not include the construction of other infrastructure, including, but
6 not limited to, streets and highways, public rail transit, or water
7 resources facilities and infrastructure. For a local agency defined
8 in paragraph (1) of subdivision (f) that operates wastewater
9 facilities, solid waste management facilities, or water recycling
10 facilities, “project” also means the construction of regional and
11 local wastewater treatment facilities, regional and local solid
12 waste facilities, or regional and local water recycling facilities.

13 (2) For a local agency defined in paragraph (2) of subdivision
14 (f), “project” means the construction of regional and local
15 wastewater treatment facilities, regional and local solid waste
16 facilities, or regional and local water recycling facilities.

17 (3) For a local agency defined in paragraph (3) of subdivision
18 (f), “project” means a transit capital project.

19 22162. (a) Notwithstanding any other law, a local agency,
20 with approval of its governing body, may procure design-build
21 contracts for public works projects in excess of one million dollars
22 (\$1,000,000), awarding the contract either the low bid or the best
23 value, provided that this article shall not apply to any projects on
24 the state highway system.

25 (b) The local agency shall develop guidelines for a standard
26 organizational conflict-of-interest policy, consistent with applicable
27 law, regarding the ability of a person or entity, that performs
28 services for the local agency relating to the solicitation of a
29 design-build project, to submit a proposal as a design-build entity,
30 or to join a design-build team. This conflict-of-interest policy shall
31 apply to each local agency entering into design-build contracts
32 authorized under this article.

33 22163. (a) For contracts for public works projects awarded on
34 or after the effective date of the regulations adopted by the
35 Department of Industrial Relations pursuant to subdivision (g) of
36 Section 1771.5 of the Labor Code, the local agency shall reimburse
37 the department for its reasonable and directly related costs of
38 performing prevailing wage monitoring and enforcement on public
39 works projects pursuant to rates established by the department as
40 set forth in subdivision (h) of Section 1771.5 of the Labor Code.

1 All moneys collected pursuant to this subdivision shall be deposited
2 in the State Public Works Enforcement Fund, created by Section
3 1771.3 of the Labor Code, and shall, subject to appropriation by
4 the Legislature, be used only for enforcement of prevailing wage
5 requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations
7 for its reasonable and directly related costs of performing
8 monitoring and enforcement on public works projects, the local
9 agency may elect to continue operating an existing previously
10 approved labor compliance program to monitor and enforce
11 prevailing wage requirements on the project if it has either not
12 contracted with a third party to conduct its labor compliance
13 program and requests and receives approval from the department
14 to continue its existing program or it enters into a collective
15 bargaining agreement that binds all of the contractors performing
16 work on the project and that includes a mechanism for resolving
17 disputes about the payment of wages.

18 22164. The procurement process for the design-build projects
19 shall progress as follows:

20 (a) (1) The local agency shall prepare a set of documents setting
21 forth the scope and estimated price of the project. The documents
22 may include, but need not be limited to, the size, type, and desired
23 design character of the project, performance specifications covering
24 the quality of materials, equipment, workmanship, preliminary
25 plans or building layouts, or any other information deemed
26 necessary to describe adequately the local agency's needs. The
27 performance specifications and any plans shall be prepared by a
28 design professional who is duly licensed and registered in
29 California.

30 (2) The documents shall not include a design-build-operate
31 contract for any project.

32 (b) Based on the documents prepared under subdivision (a), the
33 local agency shall prepare and issue a request for qualifications in
34 order to prequalify or short-list the design-build entities whose
35 proposals shall be evaluated for final selection. The request for
36 qualifications shall include, but need not be limited to, the
37 following elements:

38 (1) Identification of the basic scope and needs of the project or
39 contract, the expected cost range, the methodology that will be
40 used by the local agency to evaluate proposals, the procedure for

1 final selection of the design-build entity, and any other information
2 deemed necessary by the local agency to inform interested parties
3 of the contracting opportunity.

4 (2) (A) Significant factors that the local agency reasonably
5 expects to consider in evaluating qualifications, including technical
6 design and construction expertise, skilled labor force availability,
7 and all other nonprice-related factors.

8 (B) For purposes of subparagraph (A), skilled labor force
9 availability shall be deemed satisfied by the existence of an
10 agreement with a registered apprenticeship program, approved by
11 the California Apprenticeship Council, that has graduated at least
12 one apprentice in each of the preceding five years. This graduation
13 requirement shall not apply to programs providing apprenticeship
14 training for any craft that was first deemed by the federal
15 Department of Labor and the Department of Industrial Relations
16 to be an apprenticeable craft within the five years prior to the
17 effective date of this article.

18 (3) A standard template request for statements of qualifications
19 prepared by the local agency. In preparing the standard template,
20 the local agency may consult with the construction industry, the
21 building trades and surety industry, and other local agencies
22 interested in using the authorization provided by this article. The
23 template shall require the following information:

24 (A) If the design-build entity is a privately held corporation,
25 limited liability company, partnership, or joint venture, a listing
26 of all of the shareholders, partners, or members known at the time
27 of statement of qualification submission who will perform work
28 on the project.

29 (B) Evidence that the members of the design-build team have
30 completed, or demonstrated the experience, competency, capability,
31 and capacity to complete projects of similar size, scope, or
32 complexity, and that proposed key personnel have sufficient
33 experience and training to competently manage and complete the
34 design and construction of the project, and a financial statement
35 that ensures that the design-build entity has the capacity to
36 complete the project.

37 (C) The licenses, registration, and credentials required to design
38 and construct the project, including, but not limited to, information
39 on the revocation or suspension of any license, credential, or
40 registration.

1 (D) Evidence that establishes that the design-build entity has
2 the capacity to obtain all required payment and performance
3 bonding, liability insurance, and errors and omissions insurance.

4 (E) Information concerning workers' compensation experience
5 history and a worker safety program.

6 (F) If the proposed design-build entity is a corporation, limited
7 liability company, partnership, joint venture, or other legal entity,
8 a copy of the organizational documents or agreement committing
9 to form the organization.

10 (G) An acceptable safety record. A proposer's safety record
11 shall be deemed acceptable if its experience modification rate for
12 the most recent three-year period is an average of 1.00 or less, and
13 its average total recordable injury or illness rate and average lost
14 work rate for the most recent three-year period does not exceed
15 the applicable statistical standards for its business category or if
16 the proposer is a party to an alternative dispute resolution system
17 as provided for in Section 3201.5 of the Labor Code.

18 (4) (A) The information required under this subdivision shall
19 be certified under penalty of perjury by the design-build entity and
20 its general partners or joint venture members.

21 (B) Information required under this subdivision that is not
22 otherwise a public record under the California Public Records Act
23 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
24 Title 1 of the Government Code) shall not be open to public
25 inspection.

26 (c) Based on the documents prepared as described in subdivision
27 (a), the local agency shall prepare a request for proposals that
28 invites prequalified or short-listed entities to submit competitive
29 sealed proposals in the manner prescribed by the local agency.
30 The request for proposals shall include, but need not be limited
31 to, the following elements:

32 (1) Identification of the basic scope and needs of the project or
33 contract, the estimated cost of the project, the methodology that
34 will be used by the local agency to evaluate proposals, whether
35 the contract will be awarded on the basis of low bid or best value,
36 and any other information deemed necessary by the local agency
37 to inform interested parties of the contracting opportunity.

38 (2) Significant factors that the local agency reasonably expects
39 to consider in evaluating proposals, including, but not limited to,
40 cost or price and all nonprice-related factors.

1 (3) The relative importance or the weight assigned to each of
2 the factors identified in the request for proposals.

3 (4) Where a best value selection method is used, the local agency
4 may reserve the right to request proposal revisions and hold
5 discussions and negotiations with responsive proposers, in which
6 case the local agency shall so specify in the request for proposals
7 and shall publish separately or incorporate into the request for
8 proposals applicable procedures to be observed by the local agency
9 to ensure that any discussions or negotiations are conducted in
10 good faith.

11 (d) For those projects utilizing low bid as the final selection
12 method, the competitive bidding process shall result in lump-sum
13 bids by the prequalified or short-listed design-build entities, and
14 awards shall be made to the design-build entity that is the lowest
15 responsible bidder.

16 (e) For those projects utilizing best value as a selection method,
17 the design-build competition shall progress as follows:

18 (1) Competitive proposals shall be evaluated by using only the
19 criteria and selection procedures specifically identified in the
20 request for proposals.

21 (2) Pursuant to subdivision (c), the local agency may hold
22 discussions or negotiations with responsive proposers using the
23 process articulated in the local agency's request for proposals.

24 (3) When the evaluation is complete, the responsive proposers
25 shall be ranked based on a determination of value provided,
26 provided that no more than three proposers are required to be
27 ranked.

28 (4) The award of the contract shall be made to the responsible
29 design-build entity whose proposal is determined by the local
30 agency to have offered the best value to the public.

31 (5) Notwithstanding any other provision of this code, upon
32 issuance of a contract award, the local agency shall publicly
33 announce its award, identifying the design-build entity to which
34 the award is made, along with a written decision supporting its
35 contract award and stating the basis of the award.

36 (6) The written decision supporting the local agency's contract
37 award, described in paragraph (5), and the contract file shall
38 provide sufficient information to satisfy an external audit.

39 22165. (a) The design-build entity shall provide payment and
40 performance bonds for the project in the form and in the amount

1 required by the local agency, and issued by a California admitted
2 surety. The amount of the payment bond shall not be less than the
3 amount of the performance bond.

4 (b) The design-build contract shall require errors and omissions
5 insurance coverage for the design elements of the project.

6 (c) The local agency shall develop a standard form of payment
7 and performance bond for its design-build projects.

8 22166. (a) The local agency, in each design-build request for
9 proposals, may identify specific types of subcontractors that must
10 be included in the design-build entity statement of qualifications
11 and proposal. All construction subcontractors that are identified
12 in the proposal shall be afforded all the protections of Chapter 4
13 (commencing with Section 4100) of Part 1.

14 (b) Following award of the design-build contract, the
15 design-build entity shall proceed as follows in awarding
16 construction subcontracts with a value exceeding one-half of 1
17 percent of the contract price allocable to construction work:

18 (1) Provide public notice of availability of work to be
19 subcontracted in accordance with the publication requirements
20 applicable to the competitive bidding process of the local agency,
21 including a fixed date and time on which qualifications statements,
22 bids, or proposals will be due.

23 (2) Establish reasonable qualification criteria and standards.

24 (3) Award the subcontract either on a best value basis or to the
25 lowest responsible bidder. The process may include prequalification
26 or short-listing. The foregoing process does not apply to
27 construction subcontractors listed in the original proposal.
28 Subcontractors awarded construction subcontracts under this
29 subdivision shall be afforded all the protections of Chapter 4
30 (commencing with Section 4100) of Part 1.

31 ~~22167. (a) If the local agency elects to award a project pursuant~~
32 ~~to this article, retention proceeds withheld by the local agency~~
33 ~~from the design-build entity shall not exceed 5 percent, except as~~
34 ~~otherwise specified in this section.~~

35 ~~(b) (1) In a contract between the design-build entity and the~~
36 ~~subcontractor, and in a contract between a subcontractor and any~~
37 ~~subcontractor thereunder, the percentage of the retention proceeds~~
38 ~~withheld may not exceed the percentage specified in the contract~~
39 ~~between the local agency and the design-build entity.~~

1 ~~(2) This subdivision shall not apply if the design-build entity~~
2 ~~provides written notice to any subcontractor that is not a member~~
3 ~~of the design-build entity, prior to, or at the time the bid is~~
4 ~~requested from the subcontractor, that a bond may be required and~~
5 ~~the subcontractor subsequently is unable or refuses to furnish a~~
6 ~~bond to the design-build entity, then the design-build entity may~~
7 ~~withhold retention proceeds in excess of the percentage specified~~
8 ~~in the contract between the local agency and the design-build entity~~
9 ~~from any payment made by the design-build entity to the~~
10 ~~subcontractor.~~

11 ~~(3) Notwithstanding any other provision of this chapter, the~~
12 ~~retention proceeds withheld from any payment by a local agency~~
13 ~~from the original design-build entity, by the original design-build~~
14 ~~entity contractor from any subcontractor, and by a subcontractor~~
15 ~~from any subcontractor thereunder, may exceed 5 percent on~~
16 ~~specific projects if the governing body of the public entity or~~
17 ~~designee, including, but not limited to, a general manager or other~~
18 ~~director of an appropriate department, has approved a finding~~
19 ~~during a properly noticed and normally scheduled public hearing~~
20 ~~and prior to the proposal due date that the project is substantially~~
21 ~~complex and therefore requires a higher retention amount than 5~~
22 ~~percent, and the local agency includes both this finding and the~~
23 ~~actual retention amount in the procurement documents.~~

24 ~~22167. (a) If the local agency elects to award a project~~
25 ~~pursuant to this article, retention proceeds withheld by the local~~
26 ~~agency from the design-build entity shall not exceed 5 percent if~~
27 ~~a performance and payment bond, issued by an admitted surety~~
28 ~~insurer, is required in the solicitation of bids.~~

29 ~~(b) In a contract between the design-build entity and a~~
30 ~~subcontractor, and in a contract between a subcontractor and any~~
31 ~~subcontractor thereunder, the percentage of the retention proceeds~~
32 ~~withheld may not exceed the percentage specified in the contract~~
33 ~~between the local agency and the design-build entity. If the~~
34 ~~design-build entity provides written notice to any subcontractor~~
35 ~~that is not a member of the design-build entity, prior to or at the~~
36 ~~time the bid is requested, that a bond may be required and the~~
37 ~~subcontractor subsequently is unable or refuses to furnish a bond~~
38 ~~to the design-build entity, then the design-build entity may withhold~~
39 ~~retention proceeds in excess of the percentage specified in the~~

1 *contract between the local agency and the design-build entity from*
2 *any payment made by the design-build entity to the subcontractor.*
3 22168. Nothing in this article affects, expands, alters, or limits
4 any rights or remedies otherwise available at law.

5 SEC. 14. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.